

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board..

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD W. PAROD and CHARLES H. MEIS

Appeal No. 2005-0981
Application No. 09/848,665

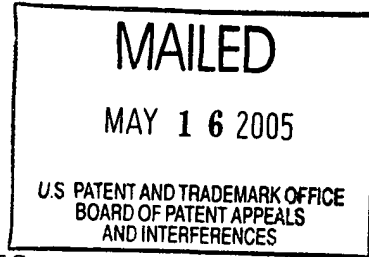
ON BRIEF

Before KIMLIN, GARRIS and KRATZ, Administrative Patent Judges.
KRATZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 33, 36, 38-45 and 50. Claims 1-26, 37, 48 and 49 stand withdrawn from consideration by the examiner as being drawn to non-elected invention(s) and/or specie(s).¹ Claims 34, 35, 46 and 47, which are all of the other claims that remain pending in this application, have been indicated as

¹ The question as to whether or not withdrawn claims 37, 48 and 49 may be rejoined with the elected invention (reply brief, pages 5-7) is not a matter before the Board but rather an issue which the examiner should address upon return of the application to the examiner's jurisdiction subsequent to our decision.



allowable by the examiner but remain objected to as being dependent on a rejected base claim.

BACKGROUND

Appellants' invention relates to an irrigation system that includes a main pipeline supported by mobile towers with the pipeline connected to a water supply, a plurality of drop tube assemblies that extend downwardly from the main pipeline and a plurality of stationary troughs or water receiving receptacles.

When stationary troughs are employed, the troughs are located within paths defined by movement of the drop tube assemblies for receiving water from the drop tube assemblies and the troughs are positioned at least partially above the surface of the ground. Whether water receiving receptacles or troughs are employed, each of those devices include at least one wall and is adapted to engage a surface of the ground. Each of those optional devices includes a fluid passageway therethrough to allow water to flow therefrom into the ground.

A further understanding of the invention can be derived from a reading of exemplary claims 33 and 45, which are reproduced below.

33. A irrigation assembly comprising a main pipeline connected to a water supply, the pipeline being supported at intervals by mobile towers, a

plurality of drop tube assemblies extending downwardly from the main pipeline, the movement of the drop tube assemblies over the ground defining paths, and a plurality of stationary troughs positioned at least partially above the surface of the ground and at least partially within the paths for receiving water from the drop tube assemblies, each trough having at least one wall which is adapted to engage a surface of the ground, and each trough defining a fluid passageway therethrough which permits water to flow from the trough into the ground.

45. An irrigation assembly comprising a main pipeline connected to a water supply, the pipeline being supported at intervals by mobile towers, a plurality of drop tube assemblies extending downwardly from the main pipeline, the movement of the drop tube assemblies over the ground defining paths, a plurality of water receiving receptacles adapted to engage the surface of the ground, each water receiving receptacle having at least one wall, and each water receiving receptacle defining at least one fluid passageway therethrough which permits water to flow from the water receiving receptacle into the ground.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Stoddart	632,795	Sep. 12, 1899
Sesser	4,676,438	Jun. 30, 1987

Claims 33, 36, 38-45 and 50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sesser in view of Stoddart. We refer to the brief and reply brief and to the answer for a complete exposition of the opposing viewpoints expressed by

appellants and the examiner concerning the issues before us on this appeal.

OPINION

Upon careful review of the respective positions advanced by appellants and the examiner with respect to the rejection that is before us for review, we find ourselves in agreement with appellants' viewpoint in that the examiner has failed to carry the burden of establishing a prima facie case of obviousness. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1471-1472, 223 USPQ 785, 787-788 (Fed. Cir. 1984). Accordingly, we will not sustain the examiner's rejection.

There are two independent claims among the rejected claims on appeal. Rejected independent claim 33 requires stationary troughs located for receiving water from drop tube assemblies and positioned partially above the ground. The troughs include a wall which is adapted to engage a surface of the ground. Each trough includes a fluid passageway therethrough permitting water to flow from the trough into the ground.

Sensor discloses a mobile irrigation system including a main pipeline (14), mobile towers (18), and drop tube assemblies (22) for supplying water directly into furrows formed in the ground.

See drawing figures 1-3 and columns 1-3 of Sensor. In the rejection before us, the examiner maintains that the irrigation system of Sesser includes troughs. In this regard, the examiner asserts that the furrows, which are formed in the ground of Sesser represent troughs, as here claimed. This is so according to the examiner because the terms "trough" and "furrow" include a common definition in that each can represent a narrow depression. See page 5 of the answer. However, as correctly explained by appellants (brief, pages 8 and 9 and reply brief, pages 2 and 3), independent claim 33 requires troughs that comprise structure, including a wall, that is separate from the ground. The troughs are positioned at least partially above a surface of the ground according to claim 33. Also, a passageway is formed in the trough which passageway permits water to flow from the trough into the ground. Consequently, on this record, we agree with appellants that appellants' claimed troughs represent structure that is distinct from the furrows formed in the ground as taught by Sesser.

The examiner furnishes an alternative position asserting that "[it] would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided a trough to the device of Sesser as taught by Stoddart to

distribute liquids in fine streams or drops (Stoddart, lines 9-12)" (answer, page 4). However, the examiner's proposed combination of Stoddart and Sesser is untenable for reasons set forth by appellant (brief, pages 8-12).

In this regard, we note that Stoddart is directed to a distributor for liquids that is particularly designed to be employed in delivering liquids onto filter beds. In the gutter like distributor of Stoddart, the gutter is filled with liquid in a manner such that liquid flows over margins (sides) of the gutter via notches (c, figures 1-3) and onto pegs (b) and then into a receiving vessel. See lines 21-24 of the specification of Stoddart. As correctly noted by appellants, Sesser is concerned with applying water directly into a furrow for irrigating plants. The examiner simply has not identified a logical rationale that would have suggested to one of ordinary skill in the art a combination of the over-flow gutter type liquid distributor of Stoddart with the furrow irrigation system of Sesser in a manner so as to arrive at the claimed subject matter.

The examiner proffers an alternative rationale to the effect that one of ordinary skill in the art would have recognized that the furrows of Sesser would degrade over time and would thus have been motivated to employ other structures made of wood or metal,

such as taught by Stoddart to preserve the furrows. However, even if one of ordinary skill in the art at the time of the invention would have viewed degradation of the furrows of Sesser as a problem to be solved², the examiner's reliance on Stoddart as a potential solution to that problem is misplaced. In this regard, in addition to the reasons set forth above, the notched over flow vessel of Stoddart was clearly not designed for furrow irrigation as evident by the highly placed notches and solid pegs of Stoddart, which are clearly not compatible with the release of water to the ground while avoiding or minimizing evaporative losses as desired by Sesser. See pages 3-5 of the reply brief.

For reasons similar to those discussed above and for reasons as set forth in the brief at pages 13 and 14, the examiner has not established how Sesser alone or in combination with Stoddart would have suggested employing a water receiving receptacle as required by independent claim 45.

² We note that the examiner has not furnished any evidence of recognition of such a problem with the furrows of Sesser by one of ordinary skill in the art. Nor has the examiner furnished persuasive evidence suggesting that a trough with fluid passageways as claimed, would have been recognized by one of ordinary skill in the art as an obvious solution to such an irrigation problem.

In a rejection under 35 U.S.C. § 103(a), all limitations recited in a claim must be considered and given appropriate effect in judging the patentability of that claim against the prior art. See In re Geerdes, 491 F.2d 1260, 1262-63, 180 USPQ 789, 791 (CCPA 1974). This, the examiner has not done. The general assertions submitted by the examiner concerning the troughs or receptacle required by appealed claims 33 and 45, respectively, are not sufficient to make out a prima facie case of obviousness absent the presentation of persuasive evidence supporting the examiner's viewpoint that one of ordinary skill in the art would have been led to use such claimed water receiving structures in conjunction with a moveable furrow irrigation system as disclosed by Sesser.

For the above stated reasons, we reverse the § 103(a) rejection advanced by the examiner on this appeal.

The decision of the examiner to reject claims 33, 36, 38-45 and 50 under 35 U.S.C. § 103(a) as being unpatentable over Sesser in view of Stoddart is reversed.

Edward C. Kimlin
EDWARD C. KIMLIN
Administrative Patent Judge

BRADLEY R. GARRIS
Administrative Patent Judge

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Peter F. Kratz
PETER F. KRATZ
Administrative Patent Judge

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